

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 120 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJ

Versus

B R JOSHI

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 04/03/97

ORAL JUDGEMENT

This appeal for enhancement of sentence by the State of Gujarat is directed against the impugned order of sentence dated 27.10.1993 rendered in Criminal case no. 4913 of 1988, by the learned Metropolitan Magistrate, Court no. 4, Ahmedabad wherein, on the respondent pleading guilty to the alleged offence under rule 61(1)(a)(b)(c) of Gujarat Factories Rules, 1963 read with section 92 of the Factories Act, 1948, was convicted

for the same and sentenced to pay a fine of Rs. 2500/-, and in default, to undergo SI for 30 days.

2. Briefly narrated, it is the prosecution case is that Mr. C.M.Bhatia, Factory Inspector, when he visited the Indian Gum Industries Ltd., situated at Udyognagar, Naroda, Ahmedabad, he came to know that on 18.8.1988 one Champusinh Ramsinh Chauhan, during the course of his employment received an injury. On the basis of this allegation, the Factory Inspector filed a complaint on 7.11.1988 for the aforesaid alleged offence in the Court of the learned Metropolitan Magistrate, Court no. 4, Ahmedabad. It further appears from the Rojkam proceedings that right from the issuance of the process on 17.11.88 the case went on being adjourned from time to time for one reason or the other and ultimately on 27.10.93 on the respondent accused pleading guilty, he came to be convicted and sentenced as stated above in para 1 of this judgment, giving rise to the present appeal for the enhancement of sentence.

3. At the time of hearing, with a view to find out as to what was the nature of injury received by the worker Champusinh Ramsinh as this was absolutely necessary to determine the question of the enhancement of sentence, learned A. P.P. was directed to call for the relevant papers from the complainant Factory Inspector. Accordingly, on perusing the papers, it appears that thumb of Champusinh was cut off and his left hand and foot were fractured. For this purpose, learned A.P.P. alongwith the affidavit of complainant C.M.Bhatia, has also placed on record the inspection report of the factory Inspector which is ordered to be taken on record. Taking into consideration the nature of serious injury, it is indeed quite clear that the sentence imposed by the learned Magistrate is ex facie grossly inadequate and manifestly unjust, resulting into serious injustice. It is difficult to understand as to when the complaint came to be filed, why the gravity and seriousness of injury was not described in the complaint itself. This is a serious mistake on the part of the Factory Inspector. I take it that it was inadvertant but then it is hoped that complainant will take proper care in future. It appears that perhaps the learned Magistrate, having no idea about the gravity and seriousness of the injury received by Champusinh probably inflicted lighter sentence. Apart from this, this was also not permissible to the learned Magistrate in view of the fact that by virtue of the provisions contained in section 92 of the Factories Act, the sentence ought not to have been less than Rs. 5000/in the case of serious injury. Any way, the accused

appears to have pleaded guilty with a view to avoid minimum statutory sentence of fine of Rs. 5,000/- being inflicted upon him or may be, in a craze of disposal, the learned Magistrate accepted the plea and let off the accused quite lightly with fine of Rs. 2500/- only. The possibility also cannot be ruled out of plea bargaining in the case. Had indeed the full and true facts were brought on record and plea of accused was recorded in the presence of the complainant, the accused would have been at least sentenced to fine of Rs. 5,000/- which is the statutory minimum prescribed under the Act. Having regard to the facts and circumstances of the case, the learned A.P.P. fairly submitted that more or less, this case appears to be a case of plea bargaining and in that view of the matter, the matter deserves to be remanded to the trial court to be decided on merits according to law.

4. During the course of hearing, the complainant C.M.Bhatia, the Factory Inspector was directed to explain as to why in his complaint as regards injury received by Champusinh he was so vague in describing the gravity and seriousness of the injury. In this regard, he has filed an affidavit stating therein that the material documents which had bearing on the decision of the case were not produced before the trial court alongwith the complaint, because he bonafide believed that the same were required to be produced at the time of recording evidence. It is his further case that since the accused pleaded guilty in his absence, his Inspection report, accident report in form no. 21 as required under the relevant rules of the Factories Act, statement of injured worker were not produced. It is his further grievance that had the learned Magistrate waited for some time, he or his departmental A.P.P. could have objected to pleading guilty and letting off the accused with lighter sentence by producing the relevant record. He further submitted that the person pleading guilty was one Ashwin Khatri who was neither an accused nor had he produced any pursis duly signed by B.R.Joshi. For this, learned A.P.P. has drawn my attention to complaint itself, where at the bottom, it is stated that for B.R.Joshi, Ashwin Khatri pleads guilty. Now, this on face of it is manifestly illegal as held by this Court in a decision rendered in the case of State of Gujarat vs. Mahavir Prasad Jain reported in (1992) 1 CLR, 863. In this regard, further on going through Rojkam proceeding, there is indeed nothing to show that it was one Ashwin Khatri who pleaded guilty and not B.R.Joshi, the accused. It must be pointed out that Rojkam proceeding must reflect at glance the true picture of the court proceedings. Any carelessness on the part of the

concerned is a serious lapse.

5. Now, the explanation given in the affidavit by complainant Factory Inspector prima facie shows that he bonafide believed that the documents were not required to be produced at the time of trial, but that does not absolve him from the fact that in the complaint, he was not required to be specific enough regarding nature of injury received by the worker, so that mischief as played by the accused in this case, could have been avoided. With a view to see that some such things do not happen in future, Factory Inspectors henceforth are hereby directed to (1) give full and true description of the nature and seriousness of injury received by the worker in the complaint itself, not only that but (2) complainant should also annex medical certificate of doctor (3) Inspection report (4) Accident report in form no. 21 as prescribed under the relevant Rules of the Factories Act (5) statement of the injured worker recorded during the course of inquiry etc.etc. Hereinafter, it shall be the duty of each and every Factory Inspector to comply with the aforesaid directions given by this court in pending cases and cases to be filed, to keep the learned Magistrate posted with all relevant information of the case. It is clarified that for whatever reasons if alongwith the complaint, Inspection report and accident report in form no. 21 and statement of injured witness are not produced, that by itself would not be fatal to the prosecution, but then the department shall call for the explanation of the concerned Factory Inspectors for not complying with the above directions given by this Court.

7. In view of the aforesaid discussion, since this case appears to be more or less a case of plea bargaining as submitted by the learned A.P.P., the matter deserves to be remanded to the trial court to be heard and decided on merits according to law. Having regard to the fact that the offence is of the year 1988, the learned Magistrate is directed to expedite the hearing and decide the case preferably on or before 31st July, 1997. With a view to see that this case is not further delayed and decided within the aforesaid stipulated period, the complainant shall appear before the Court on or before 25th March, 1997, take notice and personally serve the same upon the respondent accused B.R.Joshi. In the event of any difficulty in service, he shall take the assistance of the police of the concerned area. Thereafter, on the next date, the complainant shall offer himself and the injured worker etc. to be examined and shall produce on record the material documents namely (i)

Inspection report (ii) Accident report in form no. 21 under the relevant Rules of the Factories Act and (iii) statement of injured worker.

8. On the basis of this judgment, the Registrar is directed to immediately issue circulars to all criminal courts of the State as not to accept (1) the plea of guilty in absence of complainant,, and (2) that while accepting the same, it should be recorded of the person who is accused only and none else. Not to comply with this direction, shall amount to gross misconduct on the part of the learned Magistrate.

9. In the result, this appeal is partly allowed. Impugned judgment and order of sentence passed by the learned Magistrate is hereby quashed and set aside. Fine, if paid, to be refunded. The case is remanded to the trial court, to be decided on merits according to law in the light of the observations made in the preceding paragraph.

10. The office is directed to forward the copy of this judgment to (1) The Secretary, Legal Department (2) Secretary, Labour and Employment Department, Gandhinagar, impressing upon them to issue circulars to all Factory Inspectors of the State to comply with the guidelines prescribed above on or before 31.4.1997 and report back compliance of the same .

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